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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 SPIRIT CLOTHING COMPANY, a) Case No: 15-cv-05604
16 California corporation)
17)
18)
19 Plaintiff,) **COMPLAINT FOR**
20 vs.) **TRADEMARK**
21) **INFRINGEMENT, FALSE**
22 PANDA APPAREL, LLC, a limited) **DESIGNATION OF ORIGIN**
23 liability company,) **AND UNFAIR COMPETITION**
24 Defendant.)
25)
26)
27)

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29) **JURISDICTION, VENUE AND PARTIES**

30 1. This is an action for preliminary and permanent injunctive relief and for
31 damages arising from Defendant, PANDA APPAREL, LLC, a limited liability
32 company (hereinafter “Defendant”) for infringement of Plaintiff’s trademarks, for
33 Defendant’s violation of 15 U.S.C. §§1114 and 1125(a), and for trademark
34 infringement, passing off, and unfair competition under the common law and the
35 laws of the State of California.

1 2. This Court has jurisdiction over the subject matter of this action under
2 28 U.S.C. §§1338(a), 1338(b), and 15 U.S.C. §1121.

3 3. Plaintiff is a corporation organized and existing under the laws of the
4 State of California with its principal place of business at 2211 East 37th Street, Los
5 Angeles, California 90058.

6 4. Plaintiff is informed and believes that at all times material hereto,
7 Defendant PANDA APPAREL, LLC, is a limited liability company with its
8 principal place of business located at 10 Fadem Road, Unit 2, Springfield, New
9 Jersey 07081.

10 5. This Court has general personal jurisdiction over Defendant, as
11 Defendant does business in this judicial district, Defendant's conduct directly effects
12 Plaintiff which resides in this judicial district, Defendant directs marketing and
13 advertising in California, sells its products in California, including without limitation
14 at trade shows within this judicial district, thus creating a likelihood
15 of confusion in the minds of California residents, and this Court has long arm
16 jurisdiction over Defendant pursuant to California Civil Procedure §410.10 et seq.

17 6. Venue is proper in this district under 28 U.S.C. §1391(a), in that the
18 Defendant is subject to personal jurisdiction in this District and under 28 U.S.C.
19 §1391(b) and (c) because a substantial part of the events giving rise to the claims
20 occurred in this District.

21 **FACTS COMMON TO ALL CAUSES OF ACTION**

22 7. Plaintiff is a well-known clothing company in this District and various
23 other districts.

24 8. Plaintiff, Spirit Clothing Company, is known in the clothing
25 marketplace as "Spirit."

26 9. In light of its longstanding use of SPIRIT as a trademark ("SPIRIT
27 MARK"), since at least as early as 1983, on a wide array of clothing products, it has
28 created a significant amount of goodwill and consumer recognition in the SPIRIT
29 MARK.

1 10. Plaintiff is also the owner of U.S. Trademark Registration No.
2 3,200,974 registered on January 23, 2007, for the SPIRIT REGISTERED MARK
3 for use on clothing, namely, shirts, tops, crews, football jerseys, tanks, camis,
4 cardigans, tunics, sweatshirts, coverups, shorts, pants, foldover pants, capris, skirts,
5 foldover skirts, dresses, jackets, robes, and hats. ("SPIRIT REGISTERED MARK")
6 (Collectively the SPIRIT MARK and the SPIRIT REGISTERED MARK are known
7 as the "SPIRIT MARK").

8 11. The SPIRIT REGISTERED MARK is incontestable pursuant to 15
9 U.S.C. § 1065.

10 12. At least as early as 1999, Plaintiff began marketing a distinctive style of
11 clothing, hereinafter referred to as the SPIRIT JERSEY MARK. The SPIRIT
12 JERSEY MARK consists of a very unique and recognizable combination of
13 stitching, lettering and sleeve placement. The elements of the SPIRIT JERSEY
14 MARK are non-functional, non-essential to the purpose of the clothing and do not
15 affect the cost or quality of the clothing. The SPIRIT JERSEY MARK provides no
16 utilitarian advantage as the unique combination of the dropped shoulders, noticeable
17 seems and stitching, and the wording provide a distinct and unique appearance that
18 is inherently distinctive and protectable as a trademark.

19 13. In addition to being inherently distinctive, in light of Plaintiff's many
20 years of continuous use of the unique features of the SPIRIT JERSEY MARK,
21 consumers associate them with Plaintiff and Plaintiff has developed a substantial
22 amount of goodwill in the SPIRIT JERSEY MARK. The SPIRIT JERSEY MARK
23 has also acquired secondary meaning through, among other things, Plaintiff's
24 advertising and promotional efforts. The SPIRIT JERSEY MARK acquired
25 secondary meaning prior to Defendant's introduction of a competing product.

26 14. Plaintiff is also the owner of U. S. Registration No. 4,280,977, for the
27 SPIRIT JERSEY MARK, which was registered by the Patent and Trademark Office
28 on January 22, 2013 for use on long sleeve shirts. In allowing the SPIRIT JERSEY

MARK to be placed on the supplemental register, the examining attorney at the Patent and Trademark Office determined that the mark was non-functional.

15. Defendant is selling long sleeve shirts consisting of the SPIRIT JERSEY MARK. Defendant also sells its goods through the same or similar channels as Plaintiff markets its goods.

16. Defendant's goods, which feature the SPIRIT JERSEY MARK, are such that prospective purchasers or consumers of the goods of Defendant and the goods of Plaintiff, are likely to be confused as to source.

17. Defendant's use in commerce of the SPIRIT JERSEY MARK in connection with the sale of clothing is causing and is likely to cause confusion, deception and mistake in the minds of the public with respect to the origin and source of the products.

18. Plaintiff is informed and believes that Defendant deliberately misappropriated Plaintiff's SPIRIT JERSEY MARK in order to trade upon the good will which Plaintiff has developed in connection therewith, and to lead customers to believe that Plaintiff is the source of such products and services, which in fact do not originate with Plaintiff and are not sponsored by, or affiliated with Plaintiff. Defendant intentionally and knowingly misappropriated Plaintiff's SPIRIT JERSEY MARK with oppression, fraud and malice.

FIRST CAUSE OF ACTION

FEDERAL TRADEMARK INFRINGEMENT

19. Plaintiff realleges and incorporates herein by reference paragraphs 1 to 18 above.

20. Defendant's continued and unauthorized use of the SPIRIT JERSEY MARK constitutes trademark infringement under 15 U.S.C. §1114.

21. Defendant's wrongful use in commerce of the SPIRIT JERSEY MARK is likely to (i) cause confusion and mistake in the minds of the public with respect to

1 the origin, affiliation, and source of Defendant's products and services and (ii) to
2 deceive purchasers of such products into believing that Plaintiff controls the quality
3 thereof and endorses the same.

4 22. Defendant also contributes to infringement by selling products to third
5 parties with actual and/or constructive knowledge that such third parties would use
6 the products to infringe the SPIRIT JERSEY MARK.

7 23. Defendant also induces infringement by selling products to third
8 parties, who Defendant intentionally induces to infringe the SPIRIT JERSEY
9 MARK, and who do infringe the SPIRIT JERSEY MARK.

10 24. Defendant's acts of trademark infringement are willful and have been
11 committed with the intent to cause confusion, mistake, and deception.

12 25. As a direct and proximate result of Defendant's wrongful acts, Plaintiff
13 has suffered and continues to suffer lost profits and damages to its business
14 reputation and goodwill. Defendant will continue, unless restrained, to use
15 Plaintiff's trademark and will cause irreparable damage to Plaintiff. Plaintiff has no
16 adequate remedy at law. Plaintiff is entitled to an injunction restraining Defendant,
17 its officers, agents and employees, and all persons acting in concert with them, from
18 engaging in further acts of trademark infringement.

19 26. Plaintiff is further entitled to recover from Defendant, damages
20 sustained by Plaintiff as a result of Defendant's wrongful acts. Plaintiff is presently
21 unable to ascertain the full extent of the monetary damages it has suffered by reason
22 of Defendant's acts of trademark infringement.

23 27. Plaintiff is further entitled to recover from Defendant the gains, profits
24 and advantages Defendant has obtained as a result of its wrongful acts. Plaintiff is
25 presently unable to ascertain the full extent of the gains, profits and advantages
26 Defendant has realized by reason of its acts of trademark infringement.

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SECOND CAUSE OF ACTION

FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

28. Plaintiff hereby incorporates by reference paragraphs 1 to 27 above.

4 29. Defendant's actions constitute a false designation of origin in violation
5 of 15 U.S.C. §1125(a).

6 30. As a direct and proximate result of Defendant's wrongful acts, Plaintiff
7 has suffered and continues to suffer lost profits and damages to its business
8 reputation and goodwill. Defendant will continue, unless restrained, to use marks
9 confusingly similar to Plaintiff's SPIRIT JERSEY MARK and will cause irreparable
10 damage to Plaintiff. Plaintiff has no adequate remedy at law. Plaintiff is entitled to
11 an injunction restraining Defendant, its officers, agents and employees, and all
12 persons acting in concert with them, from engaging in further acts of false
13 designation of origin.

14 31. Plaintiff is further entitled to recover from Defendant damages
15 sustained by Plaintiff as a result of Defendant's wrongful acts. Plaintiff is presently
16 unable to ascertain the full extent of the monetary damages they have suffered by
17 reason of Defendant's acts of false designation of origin.

18 32. Plaintiff is further entitled to recover from Defendant the gains, profits
19 and advantages Defendant has obtained as a result of its wrongful acts. Plaintiff is
20 presently unable to ascertain the full extent of the gains, profits and advantages
21 Defendant has realized by reason of its acts of false designation of origin.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION

33. Plaintiff hereby incorporates by reference paragraphs 1 to 32 above.

25 | 34. Defendant's actions constitute unfair competition under the common
26 | law.

27 35. As a direct and proximate result of Defendant's wrongful acts, Plaintiff
28 has suffered and continues to suffer lost profits and damages to its business

1 reputation and goodwill. Defendant will continue, unless restrained, to use
2 Plaintiff's SPIRIT JERSEY MARK and will cause irreparable damage to Plaintiff.
3 Plaintiff has no adequate remedy at law. Plaintiff is entitled to an injunction
4 restraining Defendant, its officers, agents and employees, and all persons acting in
5 concert with them from engaging in further acts of unfair competition.

6 36. Plaintiff is further entitled to recover from Defendant damages
7 sustained by Plaintiff as a result of Defendant's wrongful acts. Plaintiff is presently
8 unable to ascertain the full extent of the monetary damages it has suffered by reason
9 of Defendant's acts of unfair competition.

10 37. Plaintiff is further entitled to recover from Defendant the gains, profits
11 and advantages Defendant has obtained as a result of its wrongful acts. Plaintiff is
12 presently unable to ascertain the full extent of the gains, profits and advantages
13 Defendant has realized by reason of its acts of unfair competition.

14 38. Defendant has engaged in such misconduct with a conscious,
15 deliberate, intentional and/or reckless disregard of the rights of Plaintiff and the
16 public; Plaintiff is therefore entitled to punitive damages to deter Defendant and
17 others from again engaging in such misconduct in an amount to be established at
18 trial.

PRAYER FOR RELIEF

20 WHEREFORE, Plaintiff prays that this Court enter judgment as follows:

21 1. Finding that Defendant has violated 15 U.S.C. §1114, 15 U.S.C.
22 §1125(a), and the common law, has infringed Plaintiff's SPIRIT JERSEY MARK,
23 has unfairly competed with Plaintiff by falsely designating the origin of its products
24 and has engaged in other acts of unfair competition;

25 2. Ordering that Defendant and its officers, agents, servants, employees
26 and attorneys and all persons in active concert or participation with any of the
27 foregoing, be enjoined preliminarily during the pendency of this action and
28 permanently thereafter from:

1 a. Offering for sale, soliciting sales, or selling any products in any
2 medium under any mark, name, symbol, logo, or other indicia that
3 incorporates or is confusingly similar to Plaintiff's SPIRIT JERSEY MARK;

4 b. Offering for sale, soliciting sales, or selling any clothing in any
5 medium, under any mark, name, symbol, logo, or other indicia which is likely
6 to cause confusion or to cause mistake or to deceive persons into the
7 erroneous belief that Defendant's products or services originate from Plaintiff,
8 or that Defendant or its agents are authorized by Plaintiff or are endorsed by
9 Plaintiff or are sponsored by Plaintiff, or are connected in some way with
10 Plaintiff or Plaintiff's SPIRIT JERSEY MARK;

11 c. Using false designations or from engaging in any act or series of
12 acts which, either alone or in combination, constitutes deceptive or unfair
13 methods of competition with Plaintiff and from otherwise interfering with, or
14 injuring Plaintiff's trademark or the goodwill associated therewith;

15 3. Ordering that Plaintiff is the exclusive owner of the SPIRIT JERSEY
16 MARK and that such mark is valid and enforceable;

17 4. Granting an award of damages suffered by Plaintiff according to proof
18 at the time of trial herein, and an accounting of Defendant's profits as a result of
19 Defendant's aforesaid acts of infringement in violation of Plaintiff's rights under the
20 Lanham Act;

21 5. Granting an award of three times the amount of compensatory damages
22 and profits pursuant to 15 U.S.C. §1117 and punitive damages in an amount to be
23 established at trial;

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6. Granting an award of Plaintiff's costs, expenses and reasonable attorneys' fees and other and further relief as is just and proper.

Dated: July 23, 2015

/s/ Willmore F. Holbrow, III

Willmore F. Holbrow, III

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Attorneys for Plaintiff

1 **DEMAND FOR JURY TRIAL**
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Plaintiff hereby demands a trial by jury of all claims triable by jury.
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Dated: July 23, 2015
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/s/ Willmore F. Holbrow, III

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